



THE ATTORNEY GENERAL OF TEXAS

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ATTORNEY GENERAL

AUSTIN 11, TEXAS

Honorable T. M. Trimble, First Assistant
State Superintendent of Public Instruction
Austin, Texas

Dear Sir:

Opinion No. 0-5072

Re: Whether property purchased by
taxing unit is taxable and
whether such property may be
sold at private sale.

We have received your letter of January 27, 1943, in which you enclose a letter from Mr. E. O. Larkin, Superintendent of Schools of the Three Rivers Independent School District. You request our opinion on two questions asked in Mr. Larkin's letter. Such questions read as follows:

"The Three Rivers School board employed a delinquent tax collector, who sued and received judgment on some real estate. At the advertised sale, no one would bid the property in for as much as the taxes and court costs were, therefore, the school bid them in, and wish to sell them. We have several buyers that will take the property off our hands. Can we sell as a private body and sale giving a quit claim deed or do we have to go back to court and resell at public sale - even though the public sale has been held once.

"Question No. 2. Where the school bids in said property, are the taxes, State, County and School automatically stopped or do we render the property and file for exemption?"

Though neither Mr. Larkin's letter nor your letter states so, we assume that the property was purchased under the terms of Article 7345b, Vernon's Annotated Civil Statutes, by the school district for the use and benefit of itself and the other taxing units which were parties to the foreclosure suit and which were in said suit adjudged to have tax liens against such property. This opinion is expressly written on such assumption, and is limited accordingly.

Section 12 of Article 7345b fixes a period of two

years after property is sold at foreclosure sale under judgment of a tax suit, in which the owner of such property or anyone having an interest therein may redeem the property, under the conditions named in said section.

Section 9 of Article 7345b provides, in part, as follows:

"Sec. 9. If the property be sold to any taxing unit which is a party to the judgment under decree of court in said suit, the title to said property shall be bid in and held by the taxing unit purchasing same for the use and benefit of itself and all other taxing units which are parties to the suit and which have been adjudged in said suit to have tax liens against such property, pro rata and in proportion to the amount of the tax liens in favor of said respective taxing units as established by the judgment in said suit, and costs and expenses shall not be payable until sale by such taxing unit so purchasing same, and such property shall not be sold by the taxing unit purchasing same for less than the adjudged value thereof or the amount of the judgments against the property in said suit, whichever is lower, without the written consent of all taxing units which in said judgment have been found to have tax liens against such property; and when such property is sold by the taxing unit purchasing same, the proceeds thereof shall be received by it for account of itself and all other said taxing units adjudged in said suit to have a tax lien against such property, and after paying all costs and expenses, shall be distributed among such taxing units pro rata and in proportion to the amount of their tax liens against such property as established in said judgment. Consent in behalf of the State of Texas under this Section of this Act may be given by the County Tax Collector of the county in which the property is located.

"Provided that if sale has not been made by such purchasing taxing unit before six months after the redemption period provided in Section 12 hereof has expired, it shall thereafter be the duty of the Sheriff upon written request from any taxing unit who has obtained a judgment in said suit, to sell said property at public outcry to the highest bidder for cash at the principal entrance of the courthouse in the

county wherein the land lies, after giving notice of sale in the manner now prescribed for sale of real estate under execution."

It is established in this State that a purchaser of land at a tax sale acquires no title to the land until the period of redemption has expired and that any right acquired at such sale is subject and subordinate to the right of the owner to redeem the land at any time within the redemption period. *Rogers v. Moore*, 100 Tex. 220; *Bente v. Sullivan*, 115 S.W. 350; *McGraw v. Potts*, 27 S.W. (2d) 550. However, it has been held that the purchaser of land at a tax sale may sell the land before the expiration of the redemption period, subject to the right of redemption. In other words, the purchaser at a tax sale (here, the school district) may, before the period of redemption has expired, sell or convey or assign its right to receive the redemption money from the owner together with the title which will vest upon failure to redeem the property within the statutory period. See *Turner v. Smith*, 119 S.W. 922 (error refused); Opinion No. 0-950.

Section 9 of Article 7345b authorizes both private and public sales, and a private sale may be made either before or after the redemption period. However, the taxing unit which purchased the property may not sell the same for less than the adjudged value thereof or the amount of the judgments against the property in the suit, whichever is lower, without the written consent of all the other taxing units which in the judgment have been found to have tax liens against such property. Opinions No. 0-1939, No. 0-3977.

In answer to your first question, it is our opinion that the school district may, before the period of redemption has expired, sell, convey, or assign at private sale its right to receive the redemption money from the owner, together with the title which will vest upon failure to redeem within the statutory period, subject to the conditions set forth in the preceding paragraph. If the period for redemption has expired and full title to the property has, therefore, passed to the school district, it may convey the property subject to the same conditions. In Opinion No. 0-950 we said the following:

"It is our opinion that the right to receive the redemption money should be conveyed by a quitclaim deed to the land containing an assignment clause by which the grantee is specifically assigned the right to collect the money from the owner and to issue to him a re-

ceipt for the same. The statute does not provide that the purchaser shall execute such a receipt but the owner would have the right to demand and receive some evidence in writing that he had redeemed his land within the time and manner provided by law."

In your second question you ask whether the land purchased by the school district at the tax sale is taxable. We have answered this question in Opinion No. 0-3624. In conformity with that opinion you are advised that until the two year period of redemption has expired, title to the property remains in the owner, and that, therefore, the property should be carried on the current tax rolls and assessed for taxes during the two year period against said owner and not the school district. If the property is not redeemed within the two year period, then the rights that the purchasing taxing unit acquired at the foreclosure sale blossom into full title, and the property should not thereafter be continued to be assessed upon the current tax rolls of the various taxing units in the suit.

Very truly yours

ATTORNEY GENERAL OF TEXAS

By s/George W. Sparks
George W. Sparks
Assistant

GWS/s/wc

APPROVED FEB 15, 1943
s/Gerald C. Mann
ATTORNEY GENERAL OF TEXAS

Approved Opinion Committee By s/BWB Chairman